

EXHIBIT M

1 Newton - Defense - Direct

237

2 A No. I wasn't looking. I had my back turned
3 to the door.

4 Q And did there come a time when you were taken
5 from the squadroom to somewhere else?

6 A Taken into the lineup for a second time.

7 Q What happened when you got in there a second
8 time?

9 A This time I was told I could choose a seat,
10 you know. We was all standing up. The fillers all
11 were in there standing up. They told me I could
12 choose any seat I wanted this time.

13 Q Did you choose a seat?

14 A Yes.

15 Q Which seat did you choose?

16 A Number five.

17 Q And after you choose that seat what happened?

18 A Okay. They had us take, put the numbers up
19 and they told us we was going to go for another lineup
20 now. The window was opened up. They just told us sit
21 there.

22 Q Did you do that?

23 A Yes.

24 Q And did there come a time when something else
25 happened after that?

1 Newton - Defense - Direct

238

2 A Okay. They told me by myself, the only one
 3 to walk up to the glass and had mouth inspected. I walked
 4 up to the glass, open up my mouth. Showed my teeth.
 5 I was the only one. I was told to sit back down then.
 6 After that they called us all one at a time from one
 7 to six to scream out I'm going to fix it for you so you
 8 don't identify me you bitch. We all screamed it out.
 9 Then they told me by myself to scream it out again and
 10 then after that they come after the lineup, they say
 11 the lineup is over.

12 Detective Newbert, the lady, she said nobody was
 13 picked out, pay the fillers. They all can go home.
 14 The filler left, walked out of the door. I was escorted
 15 to the door. They opened the door and told me to scream
 16 out the line again by myself. After I screamed out the
 17 line she told me well, I'll void the arrest, he was picked
 18 out. Let's do the paperwork to me to go wait in the
 19 cell. Went back to the cells. To me they placed me
 20 back under arrest.

21 THE COURT: That was the first time you
 22 were told you were placed under arrest?

23 THE WITNESS: When I was at my home they
 24 told me I was under arrest. They read me my
 25 rights.

1 Newton - Defense - Direct

239

2 THE COURT: In the stationhouse Newbert
3 kept telling you you had not been picked out?

4 THE WITNESS: She never told me I was
5 picked out.

6 THE COURT: Ever say you were not picked
7 out?

8 THE WITNESS: When the lineup was over
9 she told all six of us, she said to me nobody
10 is picked out. Let me pay the fillers, go
11 home. Let me void the arrest.

12 THE COURT: Void the arrest?

13 THE WITNESS: Yes.

14 THE COURT: She told you to scream it
15 out again?

16 THE WITNESS: Yes.

17 THE COURT: And you screamed it out again?

18 THE WITNESS: By myself at the door.

19 THE COURT: Then what happened?

20 THE WITNESS: She told me to step -- because
21 first she told me after I screamed it out she
22 told me step back because she going to have
23 to do the paperwork. Would I mind waiting
24 in the cells. So I say, "Yep." I went to
25 the cells. That is when the sargent came told

1 Newton - Defense - Direct

240

2 me you're back under arrest.

3 THE COURT: If I understand you correctly
4 you say you screamed out alone twice, once
5 when you were sitting down and once by the
6 door?

7 THE WITNESS: Yes.

8 THE COURT: And a third time you screamed
9 it out in order with the other six?

10 THE WITNESS: Yes.

11 THE COURT: You say you were all screaming
12 out, you did it one at a time?

13 THE WITNESS: Yes.

14 THE COURT: Then they told you to scream
15 it out again?

16 THE WITNESS: Yes.

17 THE COURT: While you were sitting in
18 the lineup?

19 THE WITNESS: Yes.

20 THE COURT: And then they told you to
21 scream it out again at the door?

22 THE WITNESS: Uh-huh.

23 Q At what point did they tell you -- withdrawn.

24 THE COURT: One point you were told to
25 go up alone to open up your mouth?

1 Newton - Defense - Direct

241

2 THE WITNESS: Yes.

3 THE COURT: Show your teeth?

4 THE WITNESS: Yes.

5 Q Was that before you screamed out anything?

6 A Before anything was said.

7 Q Was that before the window went down?

8 THE COURT: The shade.

9 Q The shade went up?

10 A After the shade.

11 MS. FREUND: Objection to form.

12 THE COURT: Overruled.

13 A It was after the shade went up that I went
14 to the glass.

15 Q How long after the shade went up?

16 A Maybe about ten, fifteen minutes.

17 THE COURT: Mr. Newton did anybody else
18 in that second lineup walk up to the window?

19 THE WITNESS: No, sir. Nobody in the
20 second lineup was walked up to the window but
21 me.

22 THE COURT: Even when they screamed out
23 the line they were all seated?

24 THE WITNESS: Even when they screamed
25 out the line nobody walked up. I was the

1 Newton - Defense - Direct

242

2 only one to walk up, told to show my teeth,
3 show my teeth. Not one of them five fillers
4 was up in the lineup.

5 Q When everybody was told to scream out?

6 A We all sat down.

7 Q Did any of you ever walk up to that window
8 and scream out anything?

9 A No one of us walk up to the window and said
10 anything.

11 THE COURT: Only time you walked up to
12 the window was to open your mouth, show you
13 teeth?

14 THE WITNESS: Yes.

15 MR. SEGAL: Nothing further.

16 CROSS EXAMINATION

17 BY MS. FREUND:

18 Q Mr. Newton?

19 A Yes.

20 Q The first time that you screamed something
21 out that is while you were sitting down?

22 A Yes.

23 Q And that is while everybody was seated, sitting
24 down and number one screamed it out?

25 A Yes.

1 Newton - Defense - Gross

243

2 Q And then number two screamed it out?

3 A Yes.

4 Q Three, four, five, six and in sequence; am
5 I correct?

6 A Yes.

7 Q And it was the same time you say that only
8 you screamed it out and that was at the window?

9 A Never at the window, at the chair.

10 THE COURT: At the chair?

11 Q You screamed it out from the chair the second
12 time?

13 A Yes.

14 Q And the third time you say that you said it
15 was at the door?

16 A Yes.

17 Q And you were alone at that time also?

18 A I was alone in the room with officers.

19 THE COURT: Was the door closed?

20 THE WITNESS: The door was cracked a little
21 bit cracked, the door.

22 THE COURT: Could you see anybody in the
23 other room?

24 THE WITNESS: I couldn't see out. They
25 just cracked the door a little.

1 Newton - Defense - Cross

244

2 THE COURT: You don't know if anybody
3 could see you?

4 THE WITNESS: No, sir.

5 Q At the time, sir, that you called this out
6 while you were seated everybody was seated; am I correct?

7 A Yes.

8 Q And the second time, sir, when you called this
9 out the fillers were also seated?

10 A Yes.

11 Q And you were the one standing?

12 A No, I didn't never stand. I was sitting down.

13 Q But all the other fillers were in that room?

14 A Yes.

15 THE COURT: Everybody was still seated?

16 Q Everybody was still seated --

17 A Yes --

18 Q -- at that time? And Detective -- do you know
19 any of the names of the detectives, Galligan who —

20 A Newbert is the only name I knew.

21 THE COURT: There was a detective in the
22 lineup room with you?

23 THE WITNESS: That is the big guy that
24 testified.

25 THE COURT: Galligan?

1 Newton - Defense - Cross

245

2 THE WITNESS: Yes.

3 THE COURT: Police Officer O'Toole?

4 THE WITNESS: The short heavyset.

5 THE COURT: He was also in the room?

6 THE WITNESS: I don't recall since they
7 said he was in the room, I don't know if that
8 was him in there but it was two of them in
9 there.

10 THE COURT: Let me understand the sequence
11 again. Excuse me, Miss Freund.

12 MS. FREUND: Sure, Judge.

13 THE COURT: Shade went up. You just sat
14 there?

15 THE WITNESS: Yes.

16 THE COURT: Then all six of you are told
17 to scream out the line?

18 THE WITNESS: Okay, the shade went up
19 first.

20 THE COURT: The shade went up first?

21 THE WITNESS: About after ten, fifteen
22 minutes I walked up to the glass, had my mouth
23 inspected. Then we was told to scream out
24 the phrase.

25 THE COURT: That is what I wanted to understand.

1 Newton - Defense - Cross

246

2 First the screen went up, six of you sat holding
3 the numbers?

4 THE WITNESS: Yes.

5 THE COURT: Then you were asked to go
6 to the window and show your teeth?

7 THE WITNESS: Yes.

8 THE COURT: Then you went back and sat
9 down all six of you were told to scream out
10 that one line?

11 THE WITNESS: Yes.

12 THE COURT: And you were told to scream
13 it out again while you were all still sitting?

14 THE WITNESS: Yes.

15 THE COURT: And the fillers were excused.
16 You were taken to the door which was opened
17 a crack and told to scream out once more?

18 THE WITNESS: Exactly.

19 CROSS EXAMINATION CONTINUED

20 BY MS. FREUND:

21 Q Mr. Newton, you don't know what happened --
22 withdrawn.

23 You have never -- you had never seen that day the
24 person that was viewing any of those lineups; did you?

25 A No.

1 Newton - Defense - Cross

247

2 Q You were never in the viewing room, the room
3 that looks into the room where the lineup takes
4 place?

5 A No.

6 Q When you said these words, Mr. Newton, "I'll
7 fix you so you don't identify me, bitch" did you say
8 them quietly?

9 A Said it in a regular tone.

10 Q So you didn't want to say those words; did
11 you?

12 A Said them in a regular tone. They didn't tell
13 us how to say it, just repeat this.

14 THE COURT: When they told you to say
15 it again did they tell you say it louder?

16 THE WITNESS: Yes. When they told me say
17 it the second time say it louder, more clear,
18 you know, but to my knowledge I said it loud
19 and clear the first time.

20 THE COURT: I understand.

21 Q And, sir, who told you that you could leave?

22 A Detective Newbert.

23 Q No other detective, Detective Galligan didn't
24 tell you that you could leave?

25 A No.

1 Newton - Defense - Cross 248

2 THE COURT: Nobody told you could leave?

3 THE WITNESS: They said we all could leave
4 after I pay those guys and void your arrest.
5 I would be able to leave.

6 THE COURT: Fine. While we're voiding
7 your arrest wait in the cell?

8 THE WITNESS: That is what she told me.

9 THE COURT: Sounds a little weird.

10 THE WITNESS: Doesn't sound weird.

11 THE COURT: If you're going to void an
12 arrest why would they tell you to wait in the
13 cell?

14 THE WITNESS: I don't know.

15 Q Somebody came into the lineup room and said
16 okay you all can leave; is that correct?

17 A Yes.

18 THE COURT: Newbert said that? Detective
19 Newbert?

20 A Yes.

21 Q And you believed that Detective Newbert was
22 referring to you also that you all could leave?

23 A She said let me pay the fillers first and I'll
24 be able to void your arrest and you then will be able
25 to leave. She was referring to me when she voided the

1 Newton - Defense - Cross

249

2 arrest.

3 Q Did police officer O'Toole speak to you while
4 you were in the lineup room?5 A O'Toole, one officer said to me after I was
6 picked out of the lineup I don't know if it was O'Toole
7 or not, not too many people get picked out on a voice
8 so don't worry about it. You probably will be cleared
9 in a little while.

10 Q This was in the lineup also?

11 A No, this was in the cells.

12 Q Nobody told you to kick and scream in the cells;
13 did they?

14 A Excuse me?

15 Q Nobody asked you to yell and scream while you
16 were in the cells; did they?

17 A No, I did that on my own.

18 THE COURT: That was after you were told
19 that you were going to be rearrested; is that
20 correct?

21 THE WITNESS: Yes.

22 THE COURT: Who told you that? T

23 THE WITNESS: Sargent -- I don't know
24 his name.

25 THE COURT: None of the officers who testified

1 Newton - Defense - Cross
2 Newton - Defense - Redirect

250

3 here?

5 THE WITNESS: None.

4 Q And, Mr. Newton, you waited in the cells while the
5 detectives completed paperwork?

6 A I had no choice.

7 MS. FREUND: No further questions, your Honor.

8 THE COURT: Any redirect?

9 REDIRECT EXAMINATION

10 BY MR. SEGAL:

11 Q The first lineup that was had do you remember how
12 long it was before when the shade went up and it went down?

13 A It took a while, maybe about twenty, twenty-five
14 minutes before I was picked out.

15 Q You mean the shade went up?

16 A Yes.

17 Q And how long do you say it was before the shade came
18 down?

19 A About twenty or twenty five minutes.

20 Q And then what happened?

21 A They told me to go back into the squadroom.

22 Q And when was the first time they told you you were
23 under arrest?

24 THE COURT: He says in the apartment first.

25 MR. SEGAL: Nothing further.

1 Newton - Defense - Recross

251

2 THE COURT: All right. Mr. Newton you can
3 resume you seat at the table. Any recross, sorry?

4 MS. FREUND: One moment.

5 THE COURT: One moment, Mr. Newton.

6 RECROSS EXAMINATION

7 BY MS. FREUND:

8 Q Any detectives speak to you after the first lineup?
9 Detective Newbert say anything to you after the first lineup?

10 A Nothing.

11 Q Detective Galligan?

12 A (Witness shakes head.)

13 Q Any other officers?

14 A Told me to go back in the squadroom have a seat.

15 THE COURT: Were you in handcuffs at the time?

16 THE WITNESS: No, I was not in handcuffs.

17 MS. FREUND: No further questions.

18 THE COURT: Mr. Newton you can resume your seat
19 at counsel table.

20 Subject to hearing from Miss Gonzalez any other
21 witnesses?

22 MR. SEGAL: No other witnesses.

23 THE COURT: People have any witnesses?

24 MS. FREUND: No, your Honor.

25 THE COURT: I will see counsel int he robing

EXHIBIT N

1 Proceedings

624

2 panel. Enjoy the rest of today and tomorrow. See
3 you Thursday morning at 9:30. Jury is excused.

4 (Whereupon, the jury panel is taken from the
5 courtroom and the following proceedings take place
6 in the absence of the jury panel.)

7 THE COURT: I will dictate the decision on the
8 Wade motion.

9 Pursuant to CPL Section 710.60 Subdivision 6,
10 following constitutes the findings of the fact and
11 conclusions of law and reasons for its determination
12 denying defendant's motion to suppress prospective
13 in-court identification testimony.

14 An indictment has been filed against the
15 defendant accusing him, inter alia of rape in the
16 first degree, robbery in the first degree and
17 sodomy in the first degree. Defendant has moved
18 for an order excluding the identification testimony
19 of V. [REDACTED] J. [REDACTED] and Aurea Gonzalez owing to
20 improperly made previous identifications of said
21 defendant by said witnesses.

22 A pre-trial Wade Hearing was held before me at
23 which Detective JoAnn Newbert, Detective Philip
24 Galligan, the complainant, [REDACTED] Oscar
25 Goldman, David Doe, Police Officer William Sean O'Too.

Proceedings

-625

Aurea Gonzalez, Taji Middleton and the defendant,
Alan Newton testified.

While there were some differences in the testimony of the witnesses particularly with regard to the lineup viewed by Miss [REDACTED], based on the credible evidence educed at said hearing the following findings of fact and conclusion of law are made:

Finding of fact

Between approximately four a.m. and 4:40 a.m. on June 23, 1984, the complaining witness V [REDACTED] J [REDACTED] was raped, sodomized, robbed and assaulted in Crotona Park and in an adjacent abandoned building. The entire incident lasted about 40 minutes and Miss [REDACTED] was able to view the defendant for at least two of those minutes.

On June 24, 1984 Miss [REDACTED] viewed several hundred photographs of male blacks at Jacobi Hospital.

She did not select picture of the perpetrator that night but did select pictures of males with similar characteristics. One June 25, 1984, she was shown several hundred more photographs and selected a picture of the defendant as the perpetrator of the crimes charged in the indictment. On each of those

Proceedings

626

dates Miss [REDACTED] was only told to look through the pictures to see if she could see a picture of the perpetrator. One June 27, 1984, Miss Aurea Gonzalez, a bodega employee, was shown an array of six pictures and asked if she saw a picture of the man who was in her store with Miss [REDACTED] shortly before the assault and she selected defendant's picture.

One June 28, 1984, Detective Newbert and three other officers went to the defendant's home. They were admitted to his apartment and they told him his picture had been selected as a perpetrator and that the police wanted him to appear in a lineup. The defendant reluctantly went to the precinct after he was permitted to call his attorney's office and told if he did not come voluntarily he would be taken forcibly. Detective Newbert knew that the defendant then had a pending case only about several weeks old.

At one p.m., not having heard from defendant's attorney, the defendant was placed in a lineup. He selected the number two position. Miss Gonzalez viewed that lineup, was told to identify anyone there that she recognized as having been in the

Proceedings

627

store at about four a.m. on June 23, 1984 and she picked the defendant. At two p.m. Miss [REDACTED] viewed the same lineup, was also asked if she recognized the perpetrator therein with the defendant at this time choosing the number five position and she selected the defendant as the one who had assaulted her.

However, she asked the officer to have each person in the lineup repeat a sentence she recalled the perpetrator having said. Each person repeated the sentence from there seated lineup position. Then repeated the sentence as each walked up to the viewing window and when Miss [REDACTED] said she still could not hear them all a third time from behind a closed door Miss [REDACTED] then identified the defendant again, this time by his voice.

The Court has viewed the photo array and the pictures of the two lineups and finds that all persons appearing therein are reasonably similar in age and appearance.

CONCLUSION OF LAW

The defendant was taken into custody in his apartment at approximately eleven a.m. on June 28, 1984. Based on the photographic identification

Proceedings

628

previously made by Miss [REDACTED] and Miss Gonzalez
the police had probable cause to arrest him.
(Wade versus N.Y. 442 U.S. 200.)

The entry into his apartment was consensual and was not an intrusion of the holding in Payton versus N.Y. 445 U.S. 573. Nor was there any impropriety in holding a lineup two hours after the defendant was taken into custody when his counsel was notified and never called, asked to be present or asked for a brief adjournment. (People versus Hawkins 55 N.Y. 2d 474.)

The photographic lineup identification procedures utilized herein were not unnecessarily suggestive and conducive to a substantial likelihood of an irreparable misidentification. The People have established by clear and convincing evidence that any in-court identification of the defendant by Miss [REDACTED] and Miss Gonzalez will stem from an independent, untainted source. Each had the opportunity to observe the alleged perpetrator several minutes during the morning in question - Miss Gonzalez in her bodega and Miss [REDACTED] in the bodega, in the car driven by the perpetrator and in the abandoned building during the assault.

1 Proceedings
2

629

3 In light of the foregoing the defendant's
4 motion to suppress is in all respects denied.
5 Defendant has an appropriate exception. Court is
6 recessed until two p.m. The trial is recessed
7 until 9:30 Thursday morning.

8 MR. SEGAL: On Thursday Miss Freund said she
9 has three witnesses.

10 THE COURT: I will ask you to proceed.

11 MR. SEGAL: Do you want me to go at two o'clock?

12 THE COURT: No. How long are your witnesses,
13 to be?

14 MS. FREUND: One witness is coming in two
15 o'clock. One witness will be here in the morning.

16 THE COURT: Who is coming in, the doctor?

17 MS. FREUND: The doctor.

18 THE COURT: I assume Mr. Segal will not object
19 to putting on a witness out of turn if it is only
20 one witness. Doctor who will be the last prosecution
21 witness. Who would you have in the morning?

22 MS. FREUND: The serologist that would be the
23 People's case.

24 MR. SEGAL: Can I ask that Detective Galligan
25 be made available and Hartfield and the other
detective, Officer O'Toole.

EXHIBIT O

DEFENDANT INFORMATION

NAME: NEWTON ALAN SEX: M RACE: BLACK DOB: 08/01/61 AGE: 22
 AKA: CITZ? YES POB: OTHER PHONE: (212) 538-2353

ADDR: 1330 WEBSTER AVE BRONX #21K NY RES PCT: 042
 SKIN TONE: DARK HGT: 5'08" WGT: 150 EYE COLOR: BROWN HAIR COLOR: BROWN
 SOC STATUS: SINGLE SOC SEC #: 101-48-5935 DEFT/VICT RELAT: NONE
 PHYSICAL COND: APPARENTLY NORMAL TYPE DRUG USED: NONE
 OCCUPATIONAL AREA: NONE
 LICENSE/PERMIT-TYPE (EXC DRIVER/OPR/REG): NO:
 CALLS: NO: (212) 538-2353 NAME: MAVIS NO: NAME:
 ORACLE# 17442932 NYSID# 4295468Q FAX# ARR. PROC: A/O, PRIS. PRESENT, C

NARRATIVE: DEFT A/C IN THAT HE FORCED C/W TO ORALLY SODOMIZE
 HIM, RAPED HER TWICE, BEATEN WITH HANDS & FEET,
 SLASHED C/W FACE WITH RAZOR.

CHARGES INFORMATION

ATT	LAW	SEC	SUB	CLS	TYPE	CTS	DESCRIPTION
TOP CHARGE-->	Y	PL	125.25	01	F	A	01 MURDER 2
TOTAL CHARGES	N	PL	130.35	01	F	B	02 RAPE 1
COUNT = 06	N	PL	130.50	01	F	B	01 CRM SEX ACT 1
	N	PL	160.05	00	F	D	01 ROBBERY-3
	N	PL	265.02	01	F	D	01 CRIM POS WEAP-3

ARREST RELATED INFORMATION

DAT? NO

TIME 11:00 DATE 06/28/84 CMD 042

WEAPON POSS/USED: CUTTING INSTRUMENT ARREST LOC: CROTONA PK-861 CROTONA PK
 NUM OF ASSOC: 00

PROPERTY VOUCHERS:

1 NO:B744483	CMD:048	VAL:N/A	TYP: FIREARMS/WEAPONS
2 NO:B744512	CMD:048	VAL:N/A	TYP: ALL OTHER

COMPLAINANT/UF-61/VICTIM INFORMATION

IS COMPL A CORP? NO OR PSNY? NO OR DISABLED? NO TOTAL VICTIMS = 01
 COMPL NAME: [REDACTED] SEX: F RACE: BLACK AGE: 25
 ADDR: 152 E. 150TH STREET BX, NY TEL NUM: (____) ____-
 AIDED NO: 001620 AIDED CMD: 048 ACC NO: ____ ACC CMD: ____
 UF-61: NO:004751 CMD:048 SECTOR:FF JURISDICTION: N.Y. POLICE DEPT
 TIME & DATE OF OCCURRENCE: 04:00 ON 06/23/84 METHOD: ____
 PREMISES: RESDNCE NOT APT-HALL ETC. LOCATION:CROTONA PK-861 CROTONA PK

ARRESTING OFFICER INFORMATION

NAME: NEWBERT JOANNE C RANK: DT3 TAX NUMBER: 867300 SHIELD: 02604
 DEPT: NYPD CMD: BX SEX CHART: DET DUTY CT SQUAD: C ASSN: INVST

OFFICER: INJURED? NO ASSIGNED? NO ON DUTY? YES IN UNIFORM? NO
 USED FORCE? NO TYPE: REASON: _____

EXHIBIT P

INDICTMENT
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX

THE PEOPLE OF THE STATE OF NEW YORK
AGAINST

J. ALAN NEWTON - AFO
DEFENDANT 4X023562

INDICTMENT NO.

2441
43001/84

COUNTS

RAPE IN THE FIRST DEGREE -
(2 COUNTS) -
SODOMY IN THE FIRST DEGREE - 3 -
ASSAULT IN THE FIRST DEGREE -
ASSAULT IN THE FIRST DEGREE -
ASSAULT IN THE FIRST DEGREE -
ROBBERY IN THE FIRST DEGREE - /
ROBBERY IN THE FIRST DEGREE - /
CRIMINAL POSSESSION OF A WEAPON IN THE FOURTH DEGREE

JUL 1 1 1984

JULY 2, 1984

A TRUE BILL

Mildred (Janes)
FOREMAN

MARIO MEROLA,
DISTRICT ATTORNEY

FIRST COUNT

THE GRAND JURY OF THE COUNTY OF THE BRONX BY THIS INDICTMENT, ACCUSE THE DEFENDANT OF THE CRIME OF RAPE IN THE FIRST DEGREE COMMITTED AS FOLLOWS:

THE DEFENDANT, ON OR ABOUT JUNE 23, 1984, IN THE COUNTY OF THE BRONX, BEING A MALE, ENGAGED IN SEXUAL INTERCOURSE WITH [REDACTED] A FEMALE BY MEANS OF FORCIBLE COMPULSION.

SECOND COUNT

THE GRAND JURY OF THE COUNTY OF THE BRONX BY THIS INDICTMENT, ACCUSE THE DEFENDANT OF THE CRIME OF RAPE IN THE FIRST DEGREE COMMITTED AS FOLLOWS:

THE DEFENDANT, ON OR ABOUT JUNE 23, 1984, IN THE COUNTY OF THE BRONX, BEING A MALE, ENGAGED IN SEXUAL INTERCOURSE WITH [REDACTED] A FEMALE BY MEANS OF FORCIBLE COMPULSION.

THIRD COUNT

THE GRAND JURY OF THE COUNTY OF THE BRONX BY THIS INDICTMENT, ACCUSE THE DEFENDANT OF THE CRIME OF SODOMY IN THE FIRST DEGREE COMMITTED AS FOLLOWS:

THE DEFENDANT, ON OR ABOUT JUNE 23, 1984, IN THE COUNTY OF THE BRONX, ENGAGED IN DEVIATE SEXUAL INTERCOURSE, TO CONTACT BETWEEN THE PENIS OF ALAN NEWTON TO THE MOUTH OF [REDACTED] BY MEANS OF FORCIBLE COMPULSION.

FOURTH COUNT

THE GRAND JURY OF THE COUNTY OF THE BRONX BY THIS INDICTMENT, ACCUSE THE DEFENDANT OF THE CRIME OF ASSAULT IN THE FIRST DEGREE COMMITTED AS FOLLOWS:

THE DEFENDANT, ON OR ABOUT JUNE 23, 1984, IN THE COUNTY OF THE BRONX, WITH INTENT TO CAUSE SERIOUS PHYSICAL INJURY TO [REDACTED] CAUSED SUCH INJURY TO [REDACTED] BY MEANS OF A DANGEROUS INSTRUMENT.

FIFTH COUNT

THE GRAND JURY OF THE COUNTY OF THE BRONX BY THIS INDICTMENT, ACCUSE THE DEFENDANT OF THE CRIME OF ASSAULT IN THE FIRST DEGREE COMMITTED AS FOLLOWS:

THE DEFENDANT, ON OR ABOUT JUNE 23, 1984, IN THE COUNTY OF THE BRONX, WITH INTENT TO DISFIGURE [REDACTED] SERIOUSLY AND PERMANENTLY, AND TO DESTROY, AMPUTATE AND DISABLE PERMANENTLY A MEMBER AND ORGAN OF THE BODY OF [REDACTED] CAUSED SUCH INJURY TO [REDACTED]

SIXTH COUNT

THE GRAND JURY OF THE COUNTY OF THE BRONX BY THIS INDICTMENT, ACCUSE THE DEFENDANT OF THE CRIME OF ASSAULT IN THE FIRST DEGREE COMMITTED AS FOLLOWS:

THE DEFENDANT, ON OR ABOUT JUNE 23, 1984, IN THE COUNTY OF THE BRONX, IN THE COURSE OF AND IN FURTHERANCE OF THE COMMISSION OR ATTEMPTED COMMISSION OF A FELONY, AND IN IMMEDIATE FLIGHT THEREFROM, THE DEFENDANT CAUSED SERIOUS PHYSICAL INJURY TO [REDACTED] WHO WAS NOT A PARTICIPANT IN THE CRIME.

SEVENTH COUNT

THE GRAND JURY OF THE COUNTY OF THE BRONX BY THIS INDICTMENT, ACCUSE THE DEFENDANT OF THE CRIME OF ROBBERY IN THE FIRST DEGREE COMMITTED AS FOLLOWS:

THE DEFENDANT, ON OR ABOUT JUNE 23, 1984, IN THE COUNTY OF THE BRONX, FORCIBLY STOLE CERTAIN PROPERTY, TO WIT: A QUANTITY OF U.S. CURRENCY AND PERSONAL PROPERTY FROM [REDACTED] AND IN THE COURSE OF THE COMMISSION OF THE CRIME AND IN IMMEDIATE FLIGHT THEREFROM, THE DEFENDANT CAUSED SERIOUS PHYSICAL INJURY TO [REDACTED] WHO WAS NOT A PARTICIPANT IN THE CRIME.

EIGHTH COUNT

THE GRAND JURY OF THE COUNTY OF THE BRONX BY THIS INDICTMENT, ACCUSE THE DEFENDANT OF THE CRIME OF ROBBERY IN THE FIRST DEGREE COMMITTED AS FOLLOWS:

THE DEFENDANT, ON OR ABOUT JUNE 23, 1984, IN THE COUNTY OF THE BRONX, FORCIBLY STOLE CERTAIN PROPERTY, TO WIT: A QUANTITY OF U.S. CURRENCY AND PERSONAL PROPERTY FROM [REDACTED] AND IN THE COURSE OF THE COMMISSION OF THE CRIME AND IN IMMEDIATE FLIGHT THEREFROM, THE DEFENDANT USED AND THREATENED THE IMMEDIATE USE OF A DANGEROUS INSTRUMENT TO WIT: A RAZOR/BOX CUTTER.

NINTH COUNT

THE GRAND JURY OF THE COUNTY OF THE BRONX BY THIS INDICTMENT, ACCUSE THE DEFENDANT OF THE CRIME OF CRIMINAL POSSESSION OF A WEAPON IN THE FOURTH DEGREE COMMITTED AS FOLLOWS:

THE DEFENDANT, ON OR ABOUT JUNE 23, 1984, IN THE COUNTY OF THE BRONX, KNOWINGLY AND UNLAWFULLY POSSESSED A DANGEROUS INSTRUMENT TO WIT: RAZOR/BOX CUTTER, WITH INTENT TO USE SAME UNLAWFULLY AGAINST ANOTHER.

MARIO MEROLA
DISTRICT ATTORNEY

EXHIBIT Q

[REDACTED] - People - Cross

434

2 Q You don't know how long?

3 A No.

4 Q At any time while you were driving in the car did
5 he ever say to you a name, what his name was.?

6 A I don't recall.

7 Q Did you ever tell the police the man told you a name?

8 A I don't recall.

9 Q You don't recall?

10 A No.

11 Q Do you recall telling the police that the name of
12 the man in the car was Willie?

13 A No I don't recall that.

14 Q You don't recall that, at any time saying that?

15 A No.

16 Q Did you ever tell the police, Detective Newbert, did
17 you ever tell her that the man's name was Willie?

18 A (No response.)

19 Q Did you ever tell that to Detective Newbert?

20 A As I said, I don't recall.

21 Q Did you ever tell it to any police officer or detective
22 during the investigation of this case that the man's name
23 was Willie?

24 A I don't remember.

25 Q You don't remember?

[REDACTED] - People - Cross

435

1
2 A Because you know things, when something like that
3 happens you don't want to remember it.

4 Q You don't remember; is that right?

5 THE COURT: All right. It is asked and answered.

6 Q After you get up to where -- to the park; right?

7 A Yes.

8 Q What is the name of that park?

9 A I don't know. I know it is Crotona Park. I know
10 it is a piece of Crotona Park.

11 Q What happens when you get up there?

12 A He said, "the car stalled as we were going up the
13 hill."

14 Q You were going up a hill?

15 A Yes.

16 Q It is a steep hill.

17 THE COURT: Car stalled when he went outside
18 lifted the hood; right.

19 THE WITNESS: Yes.

20 THE COURT: And then he kicked the car. Let's
21 go.

22 MR. SEGAL: Thank you, Judge.

23 Q Did you see the man's face at that time?

24 A No because only for a second when he lift up the hood
25 to go under the hood.